

AMENDED IN ASSEMBLY APRIL 28, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2737**

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**Introduced by Assembly Member Feuer**

February 22, 2008

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An act to amend ~~Section 121060~~ of *Sections 121060 and 121065* of, and to add *Section 121060.1* to, the Health and Safety Code, relating to communicable disease.

LEGISLATIVE COUNSEL'S DIGEST

AB 2737, as amended, Feuer. Communicable disease: involuntary testing.

Existing law authorizes a court to order the withdrawal of blood from any person charged in any criminal complaint filed with a magistrate or court and any minor with respect to whom a petition has been filed in juvenile court, in which it is alleged that the defendant or minor interfered with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of a peace officer, firefighter, or emergency medical personnel for medically accepted indications of exposure to or infection by the acquired immune deficiency syndrome (AIDS) virus, AIDS-related conditions, and those communicable diseases for which medically approved testing is readily and economically available as determined by the court.

Existing law requires copies of the test results to be sent to the defendant or minor, among other specified persons. Existing law authorizes the peace officer, firefighter, emergency medical personnel

or the employing agency, officer, or entity to petition the court for this order.

This bill would, instead, authorize a court to order the withdrawal of blood for the above-described purposes from any arrestee whenever ~~the blood or other bodily fluids of this person comes into contact with the skin or membranes of~~ a peace officer, firefighter, or emergency medical personnel *is exposed to an arrestee's blood or bodily fluids, as defined*, while the peace officer, firefighter, or emergency medical personnel is acting within the scope of his or her duties. The bill would also authorize the petition to be filed ex parte. *The bill would limit the diseases for which testing is required, to AIDS, AIDS-related conditions, and hepatitis C.* By expanding the duties of local officials, this bill would impose a state-mandated local program.

This bill would require the person whose sample was tested to be advised that he or she will be informed of the ~~hepatitis C and~~ HIV test results only if he or she wishes to be so informed.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 121060 of the Health and Safety Code
- 2 is amended to read:
- 3 121060. (a) Any peace officer, firefighter, or emergency
- 4 medical personnel who, while acting within the scope of his or her
- 5 duties, ~~comes into contact, through his or her skin or membranes,~~
- 6 ~~with an arrestee's blood or other bodily fluids~~ *is exposed to an*
- 7 *arrestee's blood or bodily fluids, as defined in Section 121060.1,*
- 8 may petition, ex parte, the court for an order requiring testing as
- 9 provided in this chapter.
- 10 (b) The court shall promptly conduct a hearing upon a petition
- 11 filed pursuant to subdivision (a). If the court finds that probable
- 12 cause exists to believe that a possible ~~transfer of blood, saliva,~~

~~semen, or other bodily fluid took place between the bloodborne pathogen exposure, as defined in Section 121060.1, took place between the arrestee and the peace officer, firefighter, or emergency medical personnel, as specified in this section, the court shall order that the arrestee provide two specimens of blood for testing as provided in this chapter.~~

(d) (1) Except as provided in paragraph (2), copies of the test results shall be sent to the arrestee, each peace officer, firefighter, and emergency medical personnel named in the petition and his or her employing agency, officer, or entity, and if the arrestee is incarcerated or detained, to the officer in charge and the chief medical officer of the facility where the person is incarcerated or detained.

(2) The person whose sample was tested, shall be advised that he or she will be informed of the *hepatitis C and HIV* test results only if he or she wishes to be so informed. If the person declines to be informed of the *hepatitis C and HIV* test results, then he or she shall sign a form documenting that refusal. The person's refusal to sign that form shall be construed to be a request to be informed of the *hepatitis C and HIV* test results.

SEC. 2. *Section 121060.1 is added to the Health and Safety Code, to read:*

121060.1. (a) *For purposes of Section 121060, "bloodborne pathogen exposure" means the contact of nonintact skin or mucous membranes with any of the bodily fluids identified in subdivision (b), in accordance with the most current bloodborne pathogen exposure definition established by the federal Centers for Disease Control and Prevention.*

(b) *"Bodily fluids" means any of the following:*

(1) *Blood.*

(2) *Tissue.*

(3) *Mucous containing visible blood.*

(4) *Semen.*

(5) *Vaginal secretions.*

SEC. 3. *Section 121065 of the Health and Safety Code is amended to read:*

121065. (a) The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed

1 phlebotomist may withdraw blood specimens for the purposes of  
2 this chapter.

3 (b) The court shall order that the blood specimens be transmitted  
4 to a licensed medical laboratory and that tests be conducted thereon  
5 for medically accepted indications of exposure to or infection by  
6 acquired immunity deficiency syndrome (AIDS) virus,  
7 AIDS-related conditions, and ~~those communicable diseases for~~  
8 ~~which medically approved testing is readily and economically~~  
9 ~~available as determined by the court~~ *hepatitis C*.

10 (c) Copies of test results that indicate exposure to or infection  
11 by AIDS, AIDS-related conditions, or ~~other communicable diseases~~  
12 *hepatitis C* shall also be transmitted to the department.

13 (d) The test results shall be sent to the designated recipients  
14 with the following disclaimer:

15 “The tests were conducted in a medically approved manner but  
16 tests cannot determine exposure to or infections by AIDS or ~~other~~  
17 ~~communicable diseases~~ *hepatitis C* with absolute accuracy. Persons  
18 receiving this test result should continue to monitor their own  
19 health and should consult a physician as appropriate.”

20 If the person subject to the test is a minor, copies of the test result  
21 shall also be sent to the minor’s parents or guardian.

22 (e) The court shall order all persons, other than the test subject,  
23 who receive test results pursuant to Sections 121055, 121056, or  
24 121060, to maintain the confidentiality of personal identifying  
25 data relating to the test results except for disclosure that may be  
26 necessary to obtain medical or psychological care or advice.

27 (f) The specimens and the results of tests ordered pursuant to  
28 Sections 121055, 121056, and 121060 shall not be admissible  
29 evidence in any criminal or juvenile proceeding.

30 (g) Any person performing testing, transmitting test results, or  
31 disclosing information pursuant to the provisions of this chapter  
32 shall be immune from civil liability for any action undertaken in  
33 accordance with the provisions of this chapter.

34 ~~SEC. 2.~~

35 *SEC. 4.* If the Commission on State Mandates determines that  
36 this act contains costs mandated by the state, reimbursement to  
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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